IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2817 OF 1990

Mrs.Fizabi Sharafali Badashah,)
Occ- Household work, 1924,)
Blundel Road, Camp, Pune - 1.).. Petitioner
(Org.Plaintiff)

Vs.

1. Mr.Mohan Tarachand Athawani,)
1(a) Smt.Rukmini Mohandas Atawani,)
1(b) Mr.Raju Mohandas Atawani,)
1(c) Mr.Kailash Mohandas Atawani,)
1(d) Mr.Vijay Mohandas Atawani,)
Nos.1(a) to 1(d) residing at)
79 1, Rami House,)
Agarwal Colony, Camp,)
Pune - 1.)..Respondents
(Org.Defendants)

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Shri S.M.Mhamane for the petitioner.

Shri A.Y.Sakhare, Sr.Counsel, with Smt.Varsha Palav for the respondents.

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CORAM : R.M.S.KHANDEPARKAR, J
DATED : 29th September, 2004.

ORAL JUDGMENT:

1. Heard the learned advocates for the parties. Perused the records.

2. The petitioner challenges the concurrent findings arrived at by the Courts below for dismissal of the suit for eviction of the respondent, which was

filed by the petitioner on various grounds including the ground of bonafide need of the premises for business purposes of the petitioner's sons, material alterations and additions in the suit premises and nuisance to the occupants of the suit premises.

3. Upon hearing the learned advocates for the parties, and on perusal of the records, it is seen that the trial Court, on detail analysis of the evidence on record, has come to the clear finding of fact that the petitioner had already sought eviction of two other tenants in Civil Suits Nos.399 of 1981 and 1276 of 1982 and in both the suits, she had obtained favourable decree for eviction of the said tenants. Considering the same, the Court has observed that the petitioner does not require the suit premises for her personal use and occupation as she is already having bigger premises consequent to the decrees passed in the aforesaid two suits. It was sought to be contended that the said decrees were challenged by the tenants, however, there is nothing on record to show that the said decrees have been challenged by the tenants. The finding of the trial court has not been disturbed by the lower appellate Court in that regard.

4. It was sought to be contended on behalf of the petitioner that the respondents are in possession of various other premises and, therefore, they do not require the suit premises for the purpose of their business. It is not the requirement of the respondents, that is relevant to decide the application filed by the landlord on the ground of bonafide need of the premises, but it is the need of the landlord that has to be established, and it cannot be a mere desire but a genuine need of the landlord which can only be the cause for eviction of a tenant from the premises. Once both the Courts below have arrived at the concurrent findings on the aspect of absence of bonafide need of the premises and the said findings are clearly borne out from the materials on record, it cannot be said that the said findings are perverse and warrant interference in writ jurisdiction.

5. The fact that the respondents are having various premises for their business purposes, may be relevant to decide the issue in relation to the comparative hardship. However, that issue would arise only after the landlord is able to establish the bonafide need of the premises and not otherwise. Once

the landlord fails to establish the bonafide need of the premises, the question of comparative hardship does not arise. Both the Courts below have arrived at the clear findings on this aspect which are clearly borne out from the records and have been arrived at on assessment of the evidence in proper perspective and the same also do not warrant interference in writ jurisdiction.

6. As regards the point relating to the material alterations and additions, the allegations of the petitioner were that the respondents had removed the pillars in the shop premises and in their place, the respondents had fixed the shutter. Secondly that the respondents had fixed the sign board on the shop premises and the same has been affixed by means of iron angles which are inserted in the wall and thereby the respondents have carried out the permanent alterations in the suit premises. The Courts below have observed that the suit property was purchased by the petitioner in the year 1982 and there is no material on record to show that the earlier owner had ever objected to any such alterations. Obviously, the petitioner has failed to establish that such alterations were carried out subsequent to the

purchase of the property by the petitioner. The findings also disclose that the petitioner has also failed to examine the earlier owner in establishing the fact that he had ever objected to any such alterations. Being so, the petitioner has failed to establish the case in relation to the alterations being carried out to the suit premises and the said findings in that regard also do not warrant interference.

7. As regards the ground of nuisance, there is absolutely no evidence led by the petitioner and the findings arrived at by the trial Court and confirmed by the lower appellate Court disclose that the alleged nuisance was, in fact, in relation to the alleged material alterations carried out to the suit premises. Once it is established that the alleged alterations carried out to the premises were prior to the purchase thereof by the petitioner, and there is nothing on record to disclose that the earlier owner had objected to the same, the issue of nuisance on the ground of permanent alterations and additions does not arise at all. As no other ground of challenge is canvassed in the matter, there is no case for interference in the impugned judgment and orders in exercise of writ

jurisdiction under Article 227 of the Constitution of India. The petition, therefore, fails and is dismissed accordingly. The rule is discharged with no order as to costs.